

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

JOSHUA GARTON,)
)
Plaintiff,)
)
v.) Case No. 3:21-cv-00338
) Judge Aleta A. Trauger
W. RAY CROUCH, et al.,)
)
Defendants.)

DEFENDANTS' MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. Rule 12(b)(1) and (6), Defendants Bradley Nealon, Russell Winkler, Joshua Melton, Joseph Craig, and Andrew Vallee¹ (“TBI Defendants”) move to dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Plaintiff filed the instant action against Defendants for malicious prosecution under 42 U.S.C. § 1983 and Tennessee common law, false arrest under 42 U.S.C. § 1983, First Amendment retaliation under 42 U.S.C. § 1983, and civil conspiracy. *See generally* DE 1. Plaintiff’s First Amendment retaliation claim is barred by the *Rooker-Feldman* doctrine, as a state court judge already ruled that Plaintiff’s Facebook post was not protected speech under the First Amendment. Plaintiff is also unable to state a cognizable claim against Defendants Nealon, Winkler, Melton, and Vallee for malicious prosecution under 42 U.S.C. § 1983 and Tennessee common law because they did not participate in or influence the decision to prosecute Plaintiff. These defendants were also not involved in obtaining the arrest warrant and did not arrest Plaintiff; therefore, Plaintiff’s claim for false arrest against Defendants Nealon, Winkler, Melton and Vallee fails.

In support of their Motion to Dismiss, Defendants rely on the memorandum of law filed

¹ At the time of filing, Defendant David Rausch has not been served. Plaintiff attempted to serve Defendant Rausch by mailing a copy of the summons and complaint via certified mail; however, the mailing was returned to the sender, Mr. Horwitz, by the United States Postal Office. (*See* DE 19, 19-1, 19-2, and 19-3).

contemporaneously herewith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies on June 18, 2021, a true and accurate copy of the foregoing was filed electronically and sent by way of the Court's electronic filing system to:

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